

1 CROSNER LEGAL, P.C.
2 Craig W. Straub (SBN 249032)
3 craig@crosnerlegal.com
4 Michael T. Houchin (SBN 305541)
5 mhouchin@crosnerlegal.com
6 Kurt D. Kessler (SBN 327334)
7 kurt@crosnerlegal.com
8 9440 Santa Monica Blvd. Suite 301
9 Beverly Hills, CA 90210
10 Tel: (866) 276-7637

11 *Attorneys for Plaintiffs and the Proposed Class*

12
13 **UNITED STATES DISTRICT COURT FOR THE**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 JOE SQUEO and TIFFANY TAYLOR,
17 individually, and on behalf of all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 CAMPBELL SOUP COMPANY and
22 SNYDER'S-LANCE, INC.,

23 Defendants.

Case No. 5:24-cv-02235-SVK

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Joe Squeo and Tiffany Taylor (“Plaintiffs”) individually, and on behalf of all
 2 others similarly situated, and the general public, by and through undersigned counsel, hereby
 3 bring this action against Campell Soup Company and Snyders-Lance, Inc. (together,
 4 “Defendants”), and upon information and belief and investigation of counsel, alleges as follows:

5 INTRODUCTION

6 1. This is a consumer class action for violations of the California Consumers Legal
 7 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), California Unfair Competition Law,
 8 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), breach of express warranty under California
 9 law, and for violations of New York General Business Laws §§ 349 and 350.

10 2. Defendants manufacture, distribute, advertise, and sell Cape Cod-branded Kettle
 11 Cooked Potato Chips products. The packaging prominently displays on the front of the label that
 12 these Products¹ contain “**No Artificial Colors, Flavors, or Preservatives.**”

13 3. This statement is false. Each of the Products are made with citric acid—an
 14 artificial preservative used in food products.

15 4. Defendants’ packaging, labeling, and advertising scheme is intended to give
 16 consumers the impression that they are buying a premium product that is free from preservatives.

17 5. Like other reasonable consumers, Plaintiffs were deceived by Defendants’
 18 unlawful conduct and bring this action individually and on behalf of California and New York
 19 consumers to remedy Defendants’ unlawful acts.

20 JURISDICTION AND VENUE

21 6. In its Notice of Removal (ECF No. 1), Defendant Campell Soup Company asserts
 22 that this Court has jurisdiction over this action pursuant to the Class Action Fairness Act of
 23 2005, 28 U.S.C. § 1332(d) (“CAFA”), because the proposed Class consists of 100 or more
 24

25 _____
 26 ¹ “Products” means all Cape Cod brand products labeled as containing “No Artificial Colors,
 27 Flavors or Preservatives” that include citric acid as an ingredient. The Products include, but are
 28 not limited to, Cape Cod Kettle Cooked Potato Chips in the following different flavors: (1) Sea
 Salt & Vinegar; (2) Sea Salt & Cracked Pepper; (3) Sour Cream & Onion; (4) Sweet & Spicy
 Jalapeño; and (5) Sweet Mesquite Barbeque.

1 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
2 minimal diversity exists. *See* ECF No. 1.

3 7. This Court has personal jurisdiction over Defendants because they conduct and
4 transact business in the State of California, contract to supply goods within the State of
5 California, and supply goods within the State of California. Defendants, on their own and
6 through their agents, are responsible for the distribution, marketing, labeling, and sale of the
7 Products in California, specifically in this district. The marketing of the Products, including the
8 decision of what to include and not include on the labels, emanates from Defendants. Thus,
9 Defendants have intentionally availed themselves of the markets within California through the
10 advertising, marketing, and sale of the Products to consumers in California, including Plaintiff.

11 8. The Court also has specific jurisdiction over Defendants as they have
12 purposefully directed activities towards the forum state, Plaintiff Squeo's claims arise out of
13 those activities, and it is reasonable for Defendants to defend this lawsuit because they have sold
14 deceptively advertised Products to Plaintiff Squeo and members of the class in California. *See*
15 ECF No. 1 at ¶ 28 ("During the class period, Campbell earned more than \$5 million in gross
16 revenue from purchases made in the State of California from the sale of the Products.") By
17 distributing and selling the Products in California, Defendants have intentionally and expressly
18 aimed conduct at California which caused harm to Plaintiff Squeo and the California class that
19 Defendants know is likely to be suffered by Californians.

20 9. Defendant Campbell Soup Company asserts that "[u]nder 28 U.S.C. §§ 84(a) and
21 1441(a), venue is proper in the United States District Court for the Northern District of
22 California[.]" ECF No. 1 at ¶ 9. Venue is also proper in this District pursuant to 28 U.S.C. §
23 1446(a) because Defendant removed this action from the California Superior Court for the
24 County of Santa Clara.

25 PARTIES

26 10. Defendant Campbell Soup Company ("Campbell") is a New Jersey corporation
27 that maintains its principal place of business at in Camden, New Jersey.

28 11. Defendant Snyder's-Lance, Inc. ("Snyder's-Lance") maintains its principal place
of business in Charlotte, North Carolina.

12. At all times during the class period, Defendants were the manufacturers, distributors, marketers, and sellers of the Products.

13. Defendants maintain warehouses in California and has Californian employees.² Defendants purposefully direct their actions towards California state as they have committed intentional acts expressly aimed at the forum state (selling, distributing, and marketing the Products in California which caused harm that the defendant knows is likely to be suffered in Californian (i.e., purchase of the Products by consumers). The sale of the Products is not an isolated occurrence.

14. On March 26, 2018, Campbell's acquired Snyder's-Lance for \$6.1 billion. Denise Morrison, CEO of Campbell, states: "The combination of Campbell and Snyder's-Lance creates a unique, diversified snacking portfolio of differentiated brands and a large variety of better-for-you snacks for consumers. I am excited about the combination and confident that it will create significant shareholder value through both revenue growth and cost synergies."³

15. To unlock the power of the combined brand portfolio, and achieve both cost and potential revenue opportunities, Campbell integrated the Snyder's-Lance portfolio to create a unified snacking organization called Campbell Snacks: "The Campbell Snacks team will focus on optimizing the value of our U.S. snacks business to deepen our partnership with customers through the power of the combined portfolio."⁴ The Cape Cod Products are part of the Campbell's brand.⁵

16. Plaintiff Squeo purchased the Cape Cod Kettle Cooked Sea Salt and Vinegar Potato Chips with the "No Artificial Colors, Flavors or Preservatives" label claim late last year (2023) at a retail store in California. Plaintiff Squeo has purchased the Cape Cod Salt and

² See <https://geebo.com/jobs-online/view/id/348435457-warehouse-coordinator-/mobile/1> (last visited May 14, 2024)

³ <https://investor.campbellsoupcompany.com/news/financial-news/news-details/2018/Campbell-Completes-Acquisition-of-Snyders-Lance/default.aspx> (last visited May 14, 2024)

⁴ *Id.*

⁵ *Id.*

1 Vinegar Potato Chips approximately a dozen times at retail stores in California in the past three
2 years. When purchasing the Products, Plaintiff Squeo didn't expect that the "No Artificial
3 Colors, Flavors or Preservatives" statement on the label was false. Plaintiff Squeo did not expect
4 Defendants to publicly place deceptive statements about the contents of its Products on the front
5 label of the Products.

6 17. Plaintiff Taylor has purchased the Cape Cod Kettle Cooked Potato Chips several
7 times in the following different flavors during the last three years at retail stores near Ozone
8 Park, New York: Sea Salt & Vinegar; Sour Cream & Onion; Sweet & Spicy Jalapeño; and Sweet
9 Mesquite Barbeque. She last Purchased one of the Products in approximately February-March
10 2024. The Products Plaintiff Taylor purchased contained the "No Artificial Colors, Flavors or
11 Preservatives" label claim. When purchasing the Products, Plaintiff Taylor didn't expect that the
12 "No Artificial Colors, Flavors or Preservatives" statement on the label was false. Plaintiff Taylor
13 did not expect Defendants to publicly place deceptive statements about the contents of its
14 Products on the front label of the Products.

15 18. Plaintiffs saw and relied on the "No Artificial Colors, Flavors or Preservatives"
16 claim on the labels of the Products. Plaintiffs would not have purchased the Products, or would
17 have paid less for the Products, had they known that the Products contain an artificial
18 preservative ingredient in direct contradiction to the "No Artificial Colors, Flavors or
19 Preservatives" statement on the label. As a result, Plaintiffs suffered injury in fact when they
20 spent money to purchase the Products they would not have purchased, or would have paid less
21 for, absent Defendants' misconduct.

22 19. Plaintiffs desire to purchase the Products again if the label of the Products was
23 accurate and if the Products truthfully contained "No Artificial Colors, Flavors, or
24 Preservatives." However, as a result of Defendants' ongoing misrepresentations, Plaintiffs are
25 unable to rely on the Products' labeling when deciding in the future whether to purchase the
26 Products. Considering the fact that the Plaintiffs have purchased the Products on several
27 occasions and continue to see the Products for sale, they are at an imminent risk of future injury.
28

FACTUAL ALLEGATIONS

**“NO ARTIFICIAL COLORS, FLAVORS, OR PRESERVATIVES” IS PROMINENTLY DISPLAYED
ON THE LABELS OF THE PRODUCTS**

20. The front labels for each of the Products prominently state that the Products contain “**No Artificial Colors, Flavors or Preservatives**” thereby misleading reasonable consumers into believing that the Products are free from artificially created preservatives. However, each of the Products contain the artificial preservative citric acid. Below is an example of a label for one of the Products (red circle added):

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21. The back label repeats and reinforces the “No Artificial Colors, Flavors or Preservatives” claim (red circle added):



22. The packaging for each Product contains the same “No Artificial Colors, Flavors or Preservatives” and is identical to the above packaging except for the identification of the flavor and coloring scheme:



THE CITRIC ACID IN THE PRODUCTS IS ARTIFICIAL

23. Defendants use artificial manufactured citric acid in the Products.⁶ Commercial food manufactures use a synthetic form of citric acid that is derived from heavy chemical processing.⁷ Commercially produced citric acid is manufactured using a type of black mold called *Aspergillus niger* which is modified to increase citric acid production.⁸ Consumption of manufactured citric acid has been associated with adverse health events like joint pain with swelling and stiffness, muscular and stomach pain, as well as shortness of breath.⁹ Defendants do not use natural citric acid extracted from fruit in the Products. This is because “[a]pproximately 99% of the world’s production of [citric acid] is carried out using the fungus *Aspergillus niger* since 1919.”¹⁰ As explained by a study published in the *Toxicology Reports Journal*:

Citric acid naturally exists in fruits and vegetables. However, **it is *not* the naturally occurring citric acid, but the manufactured citric acid (MCA) that is used extensively as a food and beverage additive.** Approximately 99% of the world’s production of MCA is carried out using the fungus *Aspergillus niger* since 1919. *Aspergillus niger* is a known allergen.¹¹

24. As a technical evaluation report for citric acid, compiled by the United States Department of Agriculture Marketing Services (“USDA AMS”) further explains that it is not commercially feasible to use natural citric acid extracted from fruits:

⁶ Iliana E. Sweis, *et al.*, *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

⁷ A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>

⁸ *Id.*; Pau Loke Show, *et al.*, *Overview of citric acid production from Aspergillus niger*, FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available at <https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>

⁹ Iliana E. Sweis, *et al.*, *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

¹⁰ *Id.*

¹¹ *Id.* (emphasis added)

1 “Traditionally by extraction from citrus juice, [is] no longer commercially
 2 available. It is now extracted by fermentation of a carbohydrate substance
 3 (often molasses) by citric acid bacteria, *Aspergillus niger* (a mold) or
 4 *Candida guilliermondii* (a yeast). Citric acid is recovered from the
 fermentation broth by a lime and sulfuric acid process in which the citric
 acid is first precipitated as a calcium salt and then reacidulated with sulfuric
 acid.”¹²

5
 6 25. As one of the USDA AMS reviewers commented:

7 “[Citric acid] is a natural[ly] occurring substance that commercially goes
 8 through numerous chemical processes to get to [its] final usable form. This
 processing would suggest that it be *classified as synthetic*.”¹³

9 26. When asked “Is this substance Natural or Synthetic?” USDA AMS reviewers
 10 state: “synthetic.”¹⁴

11 27. Unbeknownst to consumers, in tiny print on the back of the packaging
 12 Defendants admit that the citric acid in the Products is derived from “bioengineered food
 13 ingredients” which is manufactured from “genetically modified crops.” *See supra* at ¶ 21
 14 (“Contains bioengineered food ingredients. The ingredients from sugar and corn in the product
 15 come from genetically modified crops.”). Of course, a bioengineered ingredient is artificial.

16 28. The FDA has determined that manufactured citric acid is not natural; it is
 17 artificial. The FDA sent warning letters to Hirzel Canning Company and Oak Tree Farm Dairy,
 18 Inc., for similar violations, saying that the FDA’s policy involving the use of the word natural
 19 means that nothing artificial or synthetic has been added to the product, and that a product that
 20 labels itself “100% Natural” or “All Natural” violates that policy if it contains citric acid, and
 21 that the presence of citric acid precludes the use of the term natural to describe the product.¹⁵

22 29. The FDA explains that the “Solvent extraction process for citric acid” is
 23 accomplished via “recovery of citric acid from conventional *Aspergillus niger* fermentation
 24

25 ¹² **Exhibit E** at page 6.

26 ¹³ **Exhibit E** at page 5 (emphasis added)

27 ¹⁴ **Exhibit E** at pages 4-5.

28 ¹⁵ *See* **Exhibit B** at page 2 and **Exhibit C** at page 2.

liquor may be safely used to produce food-grade citric acid in accordance with the following conditions: (a) The solvent used in the process consists of a mixture of *n*-octyl alcohol meeting the requirements of § 172.864 of this chapter, *synthetic* isoparaffinic petroleum hydrocarbons meeting the requirements of § 172.882 of this chapter, and tridodecyl amine. 12 C.F.R. § 173.280 (emphasis added). Chemical solvents such as n-octyl alcohol and synthetic isoparaffinic petroleum hydrocarbons are used to extract the citric acid that Defendants use in the Products from *aspergillus niger* fermentation liquor. *See* 21 C.F.R. § 173.280. The citric acid that Defendants use in the Products is produced through chemical solvent extraction and contains residues of those chemical solvents.

30. The *Toxicology Reports Journal* study explains that “the potential presence of impurities or fragments from the *Aspergillus niger* in [manufactured citric acid] is a significant difference that may trigger deleterious effects when ingested.”¹⁶ The study further explains:

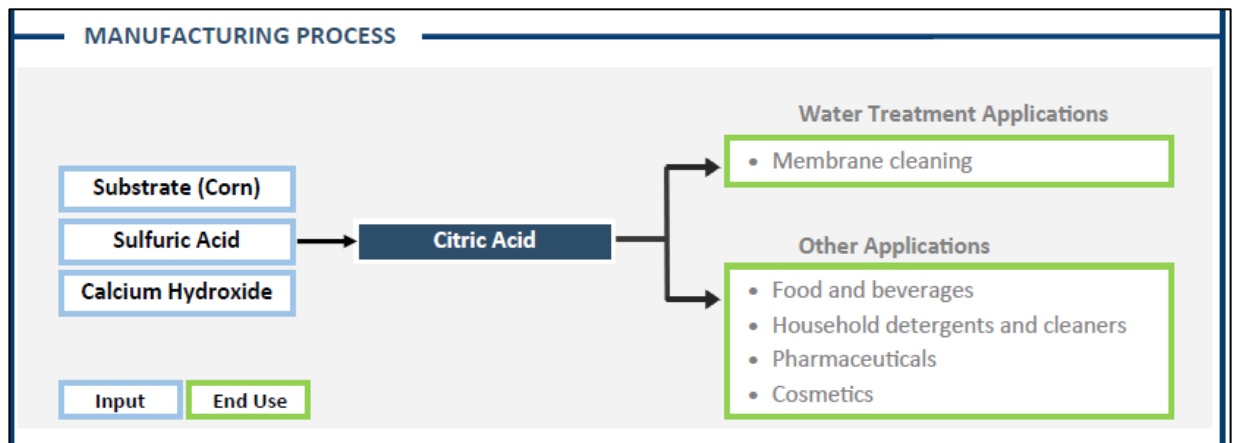
“Given the thermotolerance of *A. niger*, there is great potential that byproducts of *A. niger* remain in the final [manufactured citric acid] product. Furthermore, given the pro-inflammatory nature of *A. niger* even when heat-killed, repetitive ingestion of [manufactured citric acid] may trigger sensitivity or allergic reactions in susceptible individuals. Over the last two decades, there has been a significant rise in the incidence of food allergies”¹⁷

31. The EPA provides the following simply schematic of the manufacturing process for citric acid which includes the use of synthetic solvents like Sulfuric Acid:¹⁸

¹⁶ Iliana E. Sweis, *et al.*, *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

¹⁷ *Id.*

¹⁸ **Exhibit D** at page 1, available at <https://www.epa.gov/system/files/documents/2023-03/Citric%20Acid%20Supply%20Chain%20Profile.pdf>.



32. The citric acid in the Products is made using GMO corn (see above image “Substrate (corn)”).

33. Dr. Ryan Monahan, a prominent functional medicine practitioner, notes that the “[p]resent day process of creating manufactured citric acid involves feeding sugars derived from GMO corn to black mold, which then ferments to form manufactured citric acid.”¹⁹ This is the reason why Defendants’ indicate in tiny print on the back of the packing that the citric acid ingredient in the Products is a “bioengineered food ingredient[]” which is manufactured from “genetically modified crops.” *See supra* at ¶ 21.

34. Dr. Monahan also notes that “*Aspergillus niger* is associated with systemic inflammatory issues, including respiratory, gastrointestinal, neurological and musculoskeletal. Due to the potential for fragments of *Aspergillus niger* to make their way into the finished product of manufactured citric acid, this toxic inflammatory substance is likely being ingested by consumers of products containing citric acid. Even with high-heat processing to kill it, research has shown *Aspergillus niger* can still elicit an inflammatory response.”²⁰

¹⁹ Dr. Ryan Monahan, *Citric Acid: A Common Food Additive With An Uncommon Source* (2024) available at <https://www.peacefulmountainmedicine.com/post/citric-acid-a-common-food-additive-with-an-uncommon-source> (Last visited May 15, 2024).

²⁰ Dr. Ryan Monahan, *Citric Acid: A Common Food Additive With An Uncommon Source* (2024) available at <https://www.peacefulmountainmedicine.com/post/citric-acid-a-common-food-additive-with-an-uncommon-source>.

35. Clinical Nutritionist Serge Gregoire, notes that [f]ood manufacturers leave out that citric acid is derived from genetically modified black mold grown on GMO corn syrup” and that “[c]ompanies continuously capitalize on an ignorance-based market.”²¹ Gregoire states, “Citric acid production has become a refined and highly prized industrial process.” Gregoire note that the *Aspergillus niger* used to produce citric acid is engineered to increase production of citric acid which has “resulted in countless generations of genetically modified mutant variants, now specialized for industrial-scale economics.”

36. “Further genetic modification in the lab has taken place through the engineering of the glycolytic pathway, resulting in a metabolic-streamlining that facilitates greater citric acid production from sugar while shutting off side avenues of glycolysis.”²²

37. “Mutagenesis has been used in recent years to improve the citric-acid producing strains so that they can be used in industrial applications. The most common methods include the use of mutagens to induce mutations on the parental strains. The mutagens utilized for improvements are gamma radiation, ultraviolet radiation and often chemical mutagens. For hyperproducer strains, a hybrid method that combines ultraviolet and chemical mutagens is used (Ratledge & Kristiansen Citation2001).”²³

38. Below is a schematic representation of the metabolic reactions involved in citric acid production, the enzymes (*italics*), the known feedback loops (dashed lines) and their locations within the cellular structure of *Aspergillus niger*:²⁴

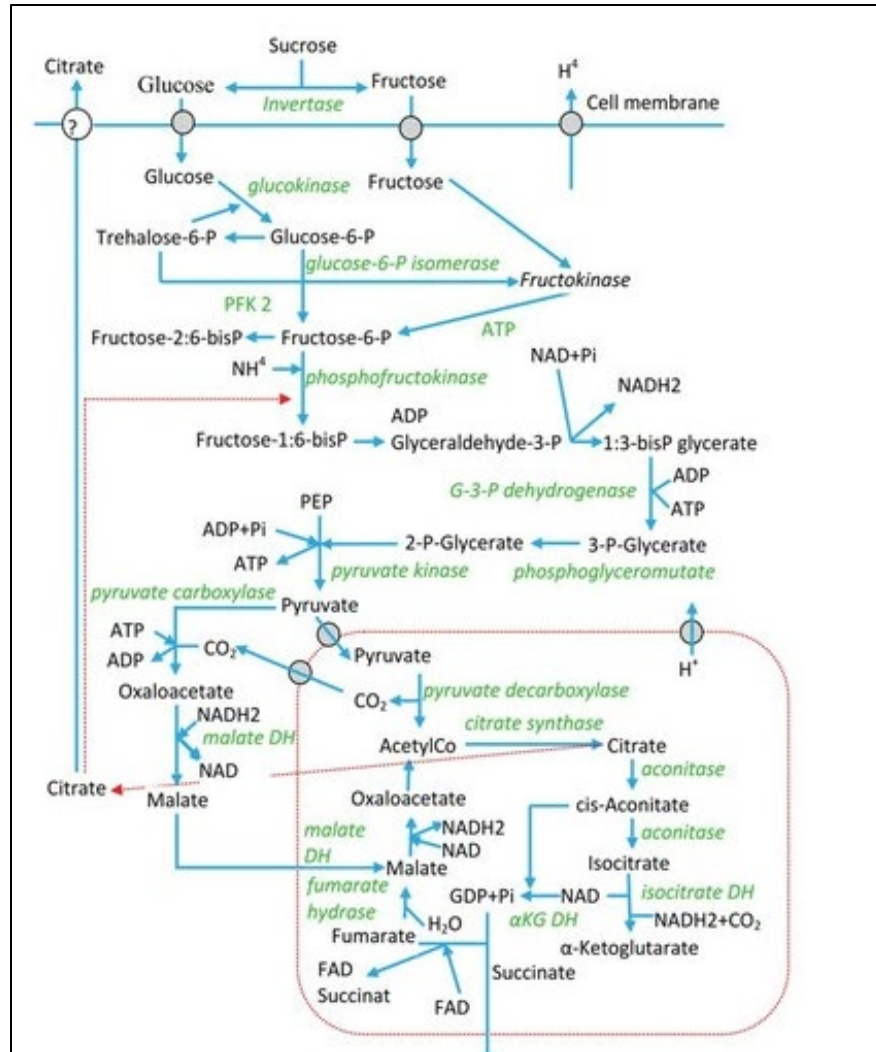
²¹ Serge Gregoire, Avoid citric acid: a mold byproduct! (July 13, 2021) *available at* <https://www.linkedin.com/pulse/avoid-citric-acid-mold-byproduct-serge-gregoire/>

²² *Id.*

²³ Show, P. L., Oladele, K. O., Siew, Q. Y., Aziz Zakry, F. A., Lan, J. C. W., & Ling, T. C. (2015). Overview of citric acid production from *Aspergillus niger*. FRONTIERS IN LIFE SCIENCE, 8(3), 271–283, *available at* <https://doi.org/10.1080/21553769.2015.1033653>

²⁴ *Id.* at Figure 3.

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39. Dictionary definitions define “artificial” as something made by man. For example, “artificial” is defined as “made by human skill; produced by humans ...”²⁵ Merriam-Webster’s online dictionary states that “artificial” means “humanly contrived ...”²⁶ Cambridge Dictionary states that “artificial” means “made by people, often as a copy of something natural.”²⁷

²⁵ *Artificial*, DICTIONARY.COM, available at <https://www.dictionary.com/browse/artificial>

²⁶ *Artificial*, MERRIAM-WEBSTER’S DICTIONARY, available at <https://www.merriam-webster.com/dictionary/artificial>

²⁷ *Artificial*, CAMBRIDGE DICTIONARY, available at <https://dictionary.cambridge.org/us/dictionary/english/artificial>

40. Below are images of the chemical process used to create citric acid for use in food – a process that is visibly artificial:



THE CITRIC ACID IN THE PRODUCTS IS A PRESERVATIVE

41. Citric acid acts as a preservative when added to food products, including the Products at issue. The Food and Drug Administration (“FDA”) defines a preservative as “any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5). The FDA has listed citric acid as a preservative

in its “Overview of Food Ingredients, Additives and Colors” as shown below:²⁸

Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid, citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

42. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express, Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and Cosmetics Act because they “contain the *chemical preservatives ascorbic acid and citric acid* but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R. [§] 101.22” (emphasis added).²⁹

43. The Encyclopedia Britanica also classifies citric acid as a preservative because it has antioxidant properties, as shown below³⁰:

²⁸ *Overview of Food Ingredients, Additives & Colors*, FOOD AND DRUG ADMINISTRATION, available at <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>

²⁹ See **Exhibit A** at page 2 (highlighted).

³⁰ *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>

Preservatives

Food preservatives are classified into two main groups: antioxidants and antimicrobials. Antioxidants are compounds that delay or prevent the deterioration of foods by oxidative mechanisms. Antimicrobial agents inhibit the growth of spoilage and pathogenic microorganisms in food.

Food preservatives	
chemical agent	mechanism of action
Antioxidants	
ascorbic acid	oxygen scavenger
butylated hydroxyanisole (BHA)	free radical scavenger
butylated hydroxytoluene (BHT)	free radical scavenger
citric acid	enzyme inhibitor/metal chelator
sulfites	enzyme inhibitor/oxygen scavenger
tertiary butylhydroquinone (TBHQ)	free radical scavenger
tocopherols	free radical scavenger

44. The Agricultural Marketing Service of the United States Department of Agriculture (“USDA”) has also recognized the use of citric acid as a preservative stating that “Citric acid has a wide variety of uses, some of which can provide preservative functions, primarily though lowering the pH of the food.”³¹

45. The USDA’s Food Safety Inspection Service’s “Guideline for Label Approval” states that “common chemical preservatives include BHA, BHT, calcium propionate, citric acid, natamycin and sodium propionate.”³²

46. Several academic journals also note the use of citric acid as a preservative.³³ Indeed, “Citric acid acts as a preservative in many processed foods, keeping them fresh. It does

³¹ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at <https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

³² FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF AGRICULTURE, available at https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf

³³ K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND EDITION) (2011), available at <https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>;

1 this by slowing or helping prevent the formation of bacteria, mold, yeast, and fungus.”³⁴ “Today,
2 citric acid is one of the most common and widely-used preservatives in the world[.]”³⁵

3 47. Citric acid functions as a preservative in the Products regardless of whether
4 Defendants intended to use citric acid as a preservative. Citric acid functions as a preservative
5 even if it is also added to the Products for some other use. *See* 21 C.F.R. §101.22(a)(5) (defining
6 preservatives as “any chemical that, when added to food, *tends to* prevent or retard
7 deterioration”) (emphasis added); *see also* Merriam-Webster’s Dictionary (defining
8 “preservative” as “something that preserves or *has the power of preserving.*”) (emphasis
9 added).³⁶

10 48. Citric acid acts as a preservative even when present at low levels. It will delay
11 bacterial spoilage, delay changes in color, flavor, and texture of the product. Citric Acid acts to
12 preserve the Products throughout the shelf-life of the Products. Because citric acid lowers the
13 pH of the Products, it functions as a preservative by preventing or significantly delaying
14 microorganisms such as mold, bacteria, fungi, and yeast from developing in the Products. Citric
15 acid’s antioxidant properties also assist in preservation by sequestering unwanted compounds
16 like metal ions from the Products.³⁷ A basic principle of food preservation is to impose numerous

17
18 K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S POULTRY SCIENCE JOURNAL VOL.
19 68, ISSUE 1 (Feb. 21, 2012), *available at* [https://www.cambridge.org/core/journals/world-s-](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646)
20 [poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646)
21 [diets/DA15C2C1F90667525BF2414DF3BFF646](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646) (“Citric Acid (CA) is a weak organic acid
22 which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

23 ³⁴ *What is citric acid, and what is it used for?*, MEDICAL NEWS TODAY (July 23, 2021), *available*
24 *at* <https://www.medicalnewstoday.com/articles/citric-acid>

25 ³⁵ *Citric Acid: One of the Most Important Preservatives in The World*, FBC INDUSTRIES, INC.
26 (Feb. 5, 2019), *available at* [https://fbcindustries.com/citric-acid-one-of-the-most-important-](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)
27 [preservatives-in-the-world/](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)

28 ³⁶ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, *available at* [https://www.merriam-](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
nld

³⁷ B.C. Behera, et al. *Microbial citric acid: Production, properties, application, and future perspectives*, FOOD FRONTIERS VOL. 2, 62-76 (Jan. 7, 2021), *available at* <https://onlinelibrary.wiley.com/doi/pdf/10.1002/fft2.66>

1 “hurdles” to prevent and delay degradation of the food product.³⁸ Here, the citric acid in the
2 Products does just that—it acts as a hurdle to unwanted spoilation of the Products.

3 49. Citric acid is also a preservative because it is a sequestrant that prevents oxidation
4 and impedes microbial growth which slows degradation of the potato chips. Indeed, patents have
5 been issued regarding preserving potatoes and include citric acid as a preservative ingredient.
6 *See e.g.*, Thane R. Siddoway et al. (Jan. 8, 2015) US 2015/0010691 A1. Washington, DC. U.S.
7 Patent and Trademark Office.

8 **REASONABLE CONSUMERS ARE DECEIVED AND SUFFERED ECONOMIC INJURY**

9 50. Consumers, like Plaintiffs, relied on Defendants’ “No Artificial Colors, Flavors
10 or Preservatives” labeling statement. The “No Artificial Colors, Flavors or Preservatives”
11 statement on the labels of the Products is material to reasonable consumers.

12 51. “[F]oods bearing ‘free-from’ claims are increasingly relevant to Americans, as
13 they perceive the products as closely tied to health ... 84 percent of American consumers buy
14 free-from foods because they are seeking out more natural or less processed foods. In fact, 43
15 percent of consumers agree that free-from foods are healthier than foods without a free-from
16 claim, while another three in five believe the fewer ingredients a product has, the healthier it is
17 (59 percent). Among the top claims free-from consumers deem most important are trans-fat-free
18 (78 percent) and preservative-free (71 percent).”³⁹

19 52. Plaintiffs and the putative class members suffered economic injury as a result of
20 Defendants’ actions. Plaintiffs and putative class members spent money that, absent Defendants’
21 actions, they would not have spent.

22
23
24 ³⁸ L. Leistner, *Basic aspects of food preservation by hurdle technology*, INTERNATIONAL
25 JOURNAL OF FOOD MICROBIOLOGY, VOL. 55, 181-186 (2000), *available at*
26 <http://envismadrasuniv.org/Physiology/pdf/Basic%20aspects%20of%20food%20preservation.pdf>

27 ³⁹ 84% of Americans buy “free-from” foods because they believe them to be more natural or
28 *less processed*, MINTEL (Sept. 3, 2015), *available at* <https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/>

53. Plaintiffs and putative class members are entitled to damages and restitution for the purchase price of the Products and/or the price premium associated with the deceptive statements on the Products. Consumers, including Plaintiffs, would not have purchased Defendants' Products, or would have paid less for the Products, if they had known the Products actually contain an artificial preservative ingredient in citric acid.

NO ADEQUATE REMEDY AT LAW

54. Plaintiffs and members of the class are entitled to equitable relief as no adequate remedy at law exists. The statutes of limitations for the causes of action pled herein vary. Class members who purchased the Products more than three years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL.

55. The scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes Defendants' overall unfair marketing scheme to promote and brand the Products, across a multitude of media platforms, including the product labels, packaging, and online advertisements, over a long period of time, in order to gain an unfair advantage over competitor products. Plaintiffs and class members may also be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct).

56. A primary litigation objective in this litigation is to obtain injunctive relief in the form of a label or ingredient change. Injunctive relief is appropriate on behalf of Plaintiffs and members of the class because Defendants continue to misrepresent the Products as containing "No Artificial Colors, Flavors or Preservatives" when the Products actually contain the artificial preservative ingredient citric acid. Injunctive relief is necessary to prevent Defendants from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, public injunction is available under the

UCL, and damages will not adequately benefit the general public in a manner equivalent to an injunction.

CLASS ACTION ALLEGATIONS

57. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following Classes:

California Class

All persons who purchased the Products for personal use in California within the applicable statute of limitations until the date class notice is disseminated.

New York Class

All persons who purchased the Products for personal use in New York within the applicable statute of limitations until the date class notice is disseminated.

(collectively referred to as the “Class”)

58. Excluded from the class are: (i) Defendants and their officers, directors, and employees; (ii) any person who files a valid and timely request for exclusion; (iii) judicial officers and their immediate family members and associated court staff assigned to the case; (iv) individuals who received a full refund of the Products from Defendants.

59. Plaintiffs reserve the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to propose or eliminate subclasses, in response to facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

60. The Class is appropriate for certification because Plaintiffs can prove the elements of the claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

61. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiffs believe that there are thousands of consumers who are Class Members described above who have been damaged by Defendants’ deceptive and misleading practices.

62. Commonality: There is a well-defined community of interest in the common questions of law and fact affecting all Class Members. The questions of law and fact common

1 to the Class Members which predominate over any questions which may affect individual Class
 2 Members include, but are not limited to:

- 3 a. Whether Defendants are responsible for the conduct alleged herein which was
 4 uniformly directed at all consumers who purchased the Products;
- 5 b. Whether Defendants' misconduct set forth in this Complaint demonstrates that
 6 Defendants engaged in unfair, fraudulent, or unlawful business practices with respect
 7 to the advertising, marketing, and sale of the Products;
- 8 c. Whether Defendants made misrepresentations concerning the Products that were
 9 likely to deceive the public;
- 10 d. Whether Plaintiffs and the Class are entitled to injunctive relief;
- 11 e. Whether Plaintiffs and the Class are entitled to money damages and/or restitution
 12 under the same causes of action as the other Class Members.

13 63. Typicality: Plaintiffs are a member of the Class that Plaintiffs seeks to represent.
 14 Plaintiffs' claims are typical of the claims of each Class Member in that every member of the
 15 Class was susceptible to the same deceptive, misleading conduct and purchased the Products.
 16 Plaintiffs are entitled to relief under the same causes of action as the other Class Members.

17 64. Adequacy: Plaintiffs are adequate Class representative because Plaintiffs'
 18 interests do not conflict with the interests of the Class Members Plaintiffs seek to represent; the
 19 consumer fraud claims are common to all other members of the Class, and Plaintiffs have a
 20 strong interest in vindicating the rights of the class; Plaintiffs have retained counsel competent
 21 and experienced in complex class action litigation and Plaintiffs intend to vigorously prosecute
 22 this action. Plaintiffs have no interests which conflict with those of the Class. The Class
 23 Members' interests will be fairly and adequately protected by Plaintiffs and proposed Class
 24 Counsel. Defendants have acted in a manner generally applicable to the Class, making relief
 25 appropriate with respect to Plaintiffs and the Class Members. The prosecution of separate actions
 26 by individual Class Members would create a risk of inconsistent and varying adjudications.
 27
 28

65. The Class is properly brought and should be maintained as a class action because a class action is superior to traditional litigation of this controversy. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of hundreds of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive to justify individual actions;
- c. When Defendants' liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- e. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation; and
- h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action;

66. Additionally, or in the alternative, the Class also may be certified because Defendants have acted or refused to act on grounds generally applicable to the Class thereby making final declaratory and/or injunctive relief with respect to the members of the Class as a whole, appropriate.

67. Plaintiffs seek preliminary and/or permanent injunctive and equitable relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent

Defendants from engaging in the acts described, and to require Defendants to provide restitution to Plaintiffs and the Class members.

68. Unless the Class is certified, Defendants will retain monies that were taken from Plaintiffs and Class members as a result of Defendants' wrongful conduct. Unless a classwide injunction is issued, Defendants will continue to commit the violations alleged and the members of the Class and the general public will continue to be misled.

FIRST CLAIM FOR RELIEF

Violation of California's Consumers Legal Remedies Act

Cal. Civ. Code §§ 1750 *et seq.*

On behalf of the California Class

69. Plaintiff Squeo realleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

70. Plaintiff Squeo brings this claim under the CLRA individually and on behalf of the Class against Defendants.

71. At all times relevant hereto, Plaintiff Squeo and the members of the Class were "consumer[s]," as defined in California Civil Code section 1761(d).

72. At all relevant times, Defendants were a "person," as defined in California Civil Code section 1761(c).

73. At all relevant times, the Products manufactured, marketed, advertised, and sold by Defendants constituted "goods," as defined in California Civil Code section 1761(a).

74. The purchases of the Products by Plaintiff Squeo and the members of the Class were and are "transactions" within the meaning of California Civil Code section 1761(e).

75. Defendants disseminated, or caused to be disseminated, through its advertising, false and misleading representations, including the Products' labeling that the Products contain "No Artificial Colors, Flavors, or Preservatives." Defendants failed to disclose that the Products contain an artificial preservative ingredient called citric acid. This is a material misrepresentation and omission as reasonable consumer would find the fact that the Products contain an artificial

1 preservative to be important to their decision in purchasing the Products. Defendants’
 2 representations violate the CLRA in the following ways:

- 3 a. Defendants represented that the Products have characteristics, ingredients, uses, and
 4 benefits which they do not have (Cal. Civ. Code § 1770(a)(5));
- 5 b. Defendants represented that the Products are of a particular standard, quality, or
 6 grade, which they are not (Cal. Civ. Code § 1770(a)(7));
- 7 c. Defendants advertised the Products with an intent not to sell the Products as
 8 advertised (Cal. Civ. Code § 1770(a)(9)); and
- 9 d. Defendants represented that the subject of a transaction has been supplied in
 10 accordance with a previous representation when it has not (Cal. Civ. Code §
 11 1770(a)(16)).

12 76. Defendants violated the CLRA because the Products were prominently
 13 advertised as containing “No Artificial Colors, Flavors or Preservatives” but the Products
 14 contain an artificial preservative ingredient called citric acid. Defendants knew or should have
 15 known that consumers would want to know that the Products contain an artificial preservative.

16 77. Defendants’ actions as described herein were done with conscious disregard of
 17 Plaintiffs’ and the Class members’ rights and were wanton and malicious.

18 78. Defendants’ wrongful business practices constituted, and constitute, a continuing
 19 course of conduct in violation of the CLRA, since Defendants are still representing that the
 20 Products have characteristics which they do not have.

21 79. Pursuant to California Civil Code section 1782(d), Plaintiff Squeo and the
 22 members of the Class seek an order enjoining Defendants from engaging in the methods, acts,
 23 and practices alleged herein.

24 80. Plaintiff Squeo has notified Defendant Campbell which is represented by the
 25 same counsel as Defendant Synder’s-Lance in writing by certified mail of the alleged violations
 26 of the CLRA and demanded that Defendant Campbell rectify the problems associated with the
 27 actions detailed above and give notice to all affected consumers of their intent to so act.
 28 Defendants have not rectified or agreed to rectify the problems associated with the actions

1 detailed herein and give notice to all affected consumers within 30 days of the date of written
 2 notice pursuant to section 1782 of the CLRA. Thus, Plaintiff Squeo seeks actual damages,
 3 punitive damages, injunctive relief, and attorneys' fees and costs for Defendants' violations of
 4 the CLRA.

5 81. Pursuant to section 1780(d) of the CLRA, below is an affidavit showing that this
 6 action was commenced in a proper forum.

7 **SECOND CLAIM FOR RELIEF**

8 **Violation of California's Unfair Competition Law**

9 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

10 ***On behalf of the California Class***

11 82. Plaintiff Squeo realleges and incorporates by reference all allegations contained
 12 in this complaint, as though fully set forth herein.

13 83. Plaintiff Squeo brings this claim under the UCL individually and on behalf of the
 14 Class against Defendants.

15 84. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or
 16 practice and any false or misleading advertising.

17 85. Defendants committed unlawful business acts or practices by making the
 18 representations and omitted material facts (which constitutes advertising within the meaning of
 19 California Business & Professions Code section 17200), as set forth more fully herein, and by
 20 violating California's Consumers Legal Remedies Act, Cal. Civ. Code §§17500, *et seq.*,
 21 California's False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by
 22 breaching express and implied warranties. Plaintiff, individually and on behalf of the other Class
 23 members, reserves the right to allege other violations of law, which constitute other unlawful
 24 business acts or practices. Such conduct is ongoing and continues to this date.

25 86. Defendants committed "unfair" business acts or practices by: (1) engaging in
 26 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
 27 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
 28 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct

that undermines or violates the intent of the consumer protection laws alleged herein. There is no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a Product that is not as advertised by Defendants. Further, Defendants failed to disclose a material fact (that the Products contain an artificial preservative) of which they had exclusive knowledge. While Plaintiff and the other Class members were harmed, Defendants were unjustly enriched by its false misrepresentations and material omissions. As a result, Defendants' conduct is "unfair," as it offended an established public policy. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

87. Defendants committed "fraudulent" business acts or practices by making the representations of material fact regarding the Products set forth herein. Defendants' business practices as alleged are "fraudulent" under the UCL because they are likely to deceive customers into believing the Products actually contain no preservatives.

88. Plaintiff and the other members of the Class have in fact been deceived as a result of their reliance on Defendants' material representations and omissions. This reliance has caused harm to Plaintiff and the other members of the Class, each of whom purchased Defendants' Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of purchasing the Products and Defendants' unlawful, unfair, and fraudulent practices.

89. Defendants' wrongful business practices and violations of the UCL are ongoing.

90. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result of Defendants' unfair and fraudulent business conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest in an amount according to proof.

91. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seeks (1) restitution from Defendants of all money obtained from Plaintiff and the other Class members as a result of unfair competition; (2) an injunction prohibiting Defendants from continuing such

practices in the State of California that do not comply with California law; and (3) all other relief this Court deems appropriate, consistent with California Business & Professions Code section 17203.

THIRD CLAIM FOR RELIEF

Breach of Express Warranty under California Law

On behalf of the California Class

92. Plaintiff Squeo realleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

93. Plaintiff Squeo brings this claim for breach of express warranty individually and on behalf of the Class against Defendants.

94. As the manufacturer, marketer, distributor, and seller of the Products, Defendants issued an express warranty by representing to consumers at the point of purchase that the Products contain “No Artificial Colors, Flavors or Preservatives.”

95. Plaintiff and the Class reasonably relied on Defendants’ misrepresentations, descriptions and specifications regarding the Products, including the representation that the Products contain “No Artificial Colors, Flavors or Preservatives.”

96. Defendants’ representations were part of the description of the goods and the bargain upon which the goods were offered for sale and purchased by Plaintiff and Members of the Class.

97. In fact, the Products do not conform to Defendants’ representations because the Products contain an artificial preservative ingredient called citric acid. By falsely representing the Products in this way, Defendants breached express warranties.

98. Plaintiff Squeo relied on Defendants’ (the manufacturers) representations on the Products’ labels and advertising materials which provide the basis for an express warranty under California law.

99. As a direct and proximate result of Defendants’ breach, Plaintiff Squeo and Members of the Class were injured because they: (1) paid money for the Products that were not what Defendants represented; (2) were deprived of the benefit of the bargain because the Products they purchased were different than Defendants advertised; and (3) were deprived of

1 the benefit of the bargain because the Products they purchased had less value than if Defendants’
 2 representations about the characteristics of the Products were truthful.

3 100. Had Defendants not breached the express warranty by making the false
 4 representations alleged herein, Plaintiff Squeo and Class Members would not have purchased
 5 the Products or would not have paid as much as they did for them.

6 **FOURTH CLAIM FOR RELIEF**

7 **Violations of New York General Business Law § 349**

8 ***On behalf of the New York Class***

9 101. Plaintiffs Taylor realleges and incorporate by reference all allegations contained
 10 in this complaint, as though fully set forth herein.

11 102. Plaintiff Taylor brings this claim on behalf of the New York Class.

12 103. New York’s General Business Law § 349 prohibits deceptive acts or practices in
 13 the conduct of any business, trade, or commerce.

14 104. In their sale of Products throughout the state of New York, at all relevant times
 15 herein, Defendants conducted business and trade within the meaning and intendment of New
 16 York’s General Business Law § 349.

17 105. Plaintiff Taylor and the New York Class members are consumers who purchased
 18 the Products from Defendants for their personal use.

19 106. By the acts and conduct alleged herein, Defendants engaged in deceptive, unfair,
 20 and misleading acts and practices by conspicuously representing on the packaging of the
 21 Products that they contain “No Artificial Colors or Flavors.” Despite that representation,
 22 however, the Products contain an artificial preservative ingredient.

23 107. The foregoing deceptive acts and practices were directed at consumers.

24 108. The foregoing deceptive acts and practices are misleading in a material way
 25 because they fundamentally misrepresent the nature and value of the Products.

26 109. As a result of Defendant’s deceptive practices, Plaintiff Taylor and the New York
 27 Class members suffered an economic injury because they would not have purchased or would
 28 have paid less for the Products had they known the veracity of Defendants’ misrepresentations.

110. On behalf of herself and the New York Class members, Plaintiff Taylor seeks to recover actual damages or fifty dollars per unlawful transaction (i.e., for each sale of the Products), whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

FIFTH CLAIM FOR RELIEF

Violations of New York General Business Law § 350

On Behalf of the New York Class

111. Plaintiffs Taylor realleges and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

112. Plaintiff Taylor brings this count on behalf of the New York Class.

113. New York's General Business Law § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

114. Defendants violated New York General Business Law § 350 by representing on the packaging of the Products that they contain "No Artificial Colors or Flavors." Despite that representation, however, the Products contain an artificial flavoring ingredient called citric acid.

115. The foregoing advertising was directed at consumers and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

116. Defendants' misrepresentations have resulted in consumer injury or harm to the public interest.

117. As a result of Defendants' false advertising, Plaintiff Taylor and the New York Class members suffered an economic injury because they would not have purchased or would have paid less for the Products had they known the veracity of Defendants' misrepresentations.

118. On behalf of herself and the New York Class members, Plaintiff Taylor seeks to recover their actual damages or five hundred dollars per unlawful transaction (i.e., for each sale of the Products), whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

REQUEST FOR RELIEF

Plaintiffs, individually, and on behalf of all others similarly situated, request for relief pursuant to each claim as follows:

119. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiffs as the Class Representative and appointing the undersigned counsel as Class Counsel;

120. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class members as a result of Defendants' unlawful, unfair, and fraudulent business practices;

121. Ordering injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to engage in a corrective advertising campaign;

122. Ordering damages in amount which is different than that calculated for restitution for Plaintiffs and the Class;

123. Ordering statutory damages in the amount of \$50 per transaction pursuant to New York General Business Law § 349 and statutory damages in the amount of \$500 per transaction pursuant to New York General Business Law § 350;

124. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiffs and the other members of the Class;

125. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and

126. Ordering other relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all claims in this Complaint.

Dated: June 6, 2024

CROSNER LEGAL, P.C.

By: /s/ Craig W. Straub
CRAIG W. STRAUB

CROSNER LEGAL, P.C.

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Craig W. Straub (SBN 249032)
craig@crosnerlegal.com
Michael T. Houchin (SBN 305541)
mhouchin@crosnerlegal.com
Kurt D. Kessler (SBN 327334)
kurt@crosnerlegal.com
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637

Attorneys for Plaintiffs and the Proposed Class

Civil Code Section 1780(d) Affidavit

I am an attorney duly licensed to practice before all of the courts of the State of California. I am one of the counsel of record for Plaintiffs. This declaration is made pursuant to § 1780(d) of the California Consumers Legal Remedies Act. Defendants have done, and are doing, business in California, including in this district. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 6, 2024 at San Diego, California.

By: /s/ Craig W. Straub

CROSNER LEGAL, P.C.